



Telangana State Electricity Regulatory Commission
5th Floor, Singareni Bhavan, Red Hills, Hyderabad -500004

Present

Sri Ismail Ali Khan, Chairman
Sri H Srinivasulu, Member

Dated 31-03-2017

O.P.No. 93 of 2015

INTERIM ORDER

In the matter of Consent to the Power Purchase Agreement (PPA) entered into by the Telangana State DISCOMs (TSDISCOMs) with the Chhattisgarh State DISCOM (CSDISCOM) For Purchase of 1000 MW of Power on a Long Term basis

Southern Power Distribution Company of Telangana State Limited (TSSPDCL)

..... Procurer-I & 'The Lead Procurer'

Northern Power Distribution Company of Telangana State Limited (TSNPDCL)

.....Procurer - II

.....Applicants

Whereas the Southern Power Distribution Company of Telangana State Ltd., (TSSPDCL) and the Northern Power Distribution Company of Telangana State Ltd., (TSNPDCL) have sought consent to the power purchase agreement (PPA) entered into by them (Jointly) with the Chhattisgarh State Power Distribution Company Ltd., (CSPDCL) for procuring 1000MW of power.

And whereas upon consideration of the proposal, the same has been taken on file of the Commission in the above said O.P. number. On further examination of the material placed before the Commission including the comments and objections received and heard from the public at large, the Commission passed the following interim order pending the disposal of the consent application finally u/s 86(1)(b) of the Electricity Act, 2003 (EA, 2003).

INTERIM ORDER

An application was filed on 26.09.2015 seeking the approval for the Power Purchase Agreement (PPA) entered into by the TSDISCOMS i.e., TSSPDCL and

TSNPDCL with the Chhattisgarh State Power Distribution Company Ltd., for procuring 1000 MW of power.

2. TSDISCOMs viz., TSSPDCL & TSNPDCL entered into a Power Purchase Agreement (PPA) with the Chhattisgarh State Power Distribution Company Ltd (CSPDCL - 'Supplier') on 22nd September 2015, pursuant to the Memorandum of Understanding (MoU) entered into by the Government of Telangana with the Government of Chhattisgarh on 03rd November 2014, for the procurement of 1,000 MW of power from the Government of Chhattisgarh, with TSSPDCL being the 'Lead Procurer' & Procurer-I, TSNPDCL being the Procurer-II and the CSPDCL being the 'Supplier'.

3. The Supplier i.e. CSPDCL has a back to back long term PPA with the Chhattisgarh State Power Generation Company Ltd (CSPGCL) for procurement of 1,000 MW from the 2x500 MW Thermal Power Station, situated at Marwa in Janjgir-Champa District, and has been identified by the Govt. of Chhattisgarh to supply 1,000 MW of power to the Procurers i.e., TSDISCOMs.

4. The TSDISCOMS agreed to procure the power upto the Aggregate Contracted Capacity and pay the supplier at the tariff determined by the Chhattisgarh State Electricity Regulatory Commission (CSERC) along with the Trading Margin as approved by this Commission. Subsequently, the supplier agreed not to claim the trading margin. The Commission conducted the public hearing after inviting the objections and suggestions on the PPA.

5. The PPA dated 22.09.2015 stipulates that the tariff of power supplied by the CSPDCL shall be determined by the CSERC on the basis of the back to back PPA it has with the CSPGCL. The PPA entered into contains the mechanism to arrive at the tariff as per the provisions of the Electricity Act, 2003 in the Schedule-4 read with Article 5. Therefore, the PPA dated 22.09.2015 does not contain the exact price at which the TSDISCOMS are going to purchase the power from the supplier. At the time of entering into the MOU by the Government of Telangana, the Marwa plant from where the TSDISCOMS intend to procure the power was under construction and the capital cost of the project becomes ascertainable only when

the power plant is commercially ready to generate the power and the same is known as COD. For this precise reason, the PPA did not contain the exact price of power per unit.

6. In the PPA, it was agreed that the tariff shall be determined by the CSERC and the issue that arises for our consideration is which Commission viz., CSERC or TSERC has the jurisdiction to determine the tariff of power going to be supplied by the CSPDCL to the TSDISCOMS on the basis of back to back PPA with CSPGCL under the provisions of the EA, 2003 as the terms & conditions of a PPA cannot be in violation of the provisions of EA, 2003.

7. Chapter-VII of the Electricity Act, 2003 deals with the tariff and in the present context Sections 61 to 64 are relevant. Section 61 contains the provisions of Terms & Conditions, Principles and Methodologies for determination of tariff. Section 62 deals with the determination of tariff and stipulates that Appropriate Commission shall determine the tariff in accordance with the provisions of the Act for supply of electricity by “a generating company” to “a distribution licensee”. Sections 62 (2) to 62 (6) deal with various aspects of tariff determination and these provisions have no relevance to the issue of jurisdiction to determine the tariff. Section 63 deals with the determination of tariff by bidding process.

8. Chapter X of the Act deals with the Constitution, powers and functions of the Central, Joint and State Commissions. Section 86(1)(a) stipulates that the State Commission shall determine the tariff for the ‘generation’ and ‘supply’ of electricity within the State in which such Commission is functioning. After perusing Sections 62(1)(a) and 86(1)(a), we are of the view that the tariff of a ‘generating company’ supplying electricity to a ‘distribution licensee’ within the State or outside the State (not falling under the provisions of Section 79) shall be determined by the Commission of the State where the electricity is ‘generated’. Thus, in our view, as the CSPGCL is located in the State of Chhattisgarh from where the energy is being generated, the tariff shall be determined by the CSERC in accordance with the provisions of the EA, 2003. Further, the supplier and the procurer(s) have agreed to change the ‘delivery point’ of power. Vide letter dated 18-02-2017, the TSDISCOMS informed that the delivery point of power shall be the

Chhattisgarh State Power Transmission Company Limited - STU periphery. Thus, the generation of electricity and its delivery to the TSDISCOMS shall take place within the State of Chhattisgarh. In accordance with the provisions of Section 86(1)(a) r/w Section 62(1)(a), the State Commission within whose jurisdiction the 'generating station' is situated will have the jurisdiction to determine the generation tariff.

9. Further, the provisions of Section 64(5) are also not applicable because no application has been made by the CSDISCOM and the TSDISCOMS for determination of tariff by this Commission. The word employed in Section 64(5) is 'may' which gives discretion and it is not mandatory that this Commission alone should determine the tariff.

10. The tariff of CSPGCL shall be determined by CSERC u/s 86(1) (a) read with section 62 of the Act. An issue that arises for our consideration is that the power is being procured by the CSDISCOM from the CSPGCL and there is no direct role of CSPGCL because there is no direct PPA between the CSPGCL and the TSDISCOMS. The TSDISCOMS have informed vide letter dated 18.02.2017 that the supplier of the power has agreed to waive the trading margin and supply the power at the tariff determined by the CSERC. In view of the waiver of the trading margin, in effect CSPGCL steps into the shoe of the CSDISCOM and in our considered view absence of a direct PPA with the CSPGCL will not make any material difference for determination of the tariff because the PPA entered into by the CSPDCL stipulates that it has a back-to-back long term PPA with the CSPGCL and relying there on, the power shall be supplied to TSDISCOMS. Thus, in our considered view the PPA between CSPGCL and CSPDCL comes within the ambit of Section 86(1)(a). For the proposition that the tariff of a 'generating company' shall be determined by the Commission of the State wherein such electricity is being 'generated', we rely on the ratio laid down by the Appellate Tribunal for Electricity (ATE) in the case of Himachal Pradesh State Electricity Board vs. Uttarkhand Electricity Regulatory Commission & another in Appeal No. 183 of 2009 dated 14.09.2010. Thus, the CSERC has the power to determine the tariff of the power generated by the CSPGCL.

11. When the tariff is being determined by the CSERC in respect of the power going to be procured by the TSDISCOMS under the provisions of the EA, 2003, then, what is the role of the TSERC in the power purchase agreement entered into by the TSDISCOMS with the supplier. To appreciate the issue, the provisions of Section 86(1)(b) are reproduced as under:

(b) regulate electricity purchase and procurement process of distribution licenses including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;

12. Section 86(1)(b) stipulates that TSERC shall regulate the electricity purchase and procurement process of TSDISCOMS including the price at which electricity shall be procured from the CSDISCOM. The provisions of Section 86(1)(b) empower the TSERC to accord the approval for the purchase of power by the TSDISCOMS from the CSDISCOM at the tariff determined by the CSERC. In our considered view, the consent / approval of the TSERC for the procurement of power by the TSDISCOMS from the 'supplier' through the PPA is mandatory u/s 86(1)(b) despite the fact that the tariff shall be determined by the CSERC.

13. The above view of this Commission is fortified by the decisions of the Supreme Court and the Appellate Tribunal for Electricity. The Supreme Court in the case of Tata Power Company Ltd vs Reliance Energy Limited and Others in Civil Appeal Nos. 3510-3511 of 2008 dealt with the functions of the State Commission and the relevant portions from this decision are reproduced as under:

“Section 86 provides for the functions of the State Commission, clause (a) of sub-section (1) whereof empowers it to determine the tariff for generation, supply, transmission and wheeling of electricity. Clause (b) empowers it to regulate electricity purchase and procurement process of distribution licensees. Inevitably it speaks of PPA. PPA may provide for short term plan, a mid-term plan or a long-term plan. Depending upon the tenure of the plan, the requirement of the distribution licensee vis-à-vis its consumers; the nature of supply and all other relevant considerations, approval thereof can be granted or refused.”

Further, the Supreme Court observed “ A generating company, if the liberalization and privatisation policy is to be given effect to, must be held to be free to enter into an agreement and in particular long term agreement with the distribution agency, terms and conditions of such an agreement, however, are not unregulated. Such an agreement is subject to grant of

approval by the Commission. The Commission has a duty to check if the allocation of power is reasonable. If the terms and conditions relating to quantity, price, mode of supply the need of the distributing agency vis-à-vis the consumer, keeping in view its long-term need are not found to be reasonable, approval may not be granted.”

Thus, the ratio laid down in the case of Tata Power Company (supra) empowers this Commission to accord the approval for the PPA entered into by the TSDISCOMS with the CSDISCOM u/s 86(1)(b) of the EA, 2003.

14. Further, we also rely on the ratio laid down by the ATE in the case of Himachal Pradesh State Electricity Board vs. Uttarkhand Electricity Regulatory Commission & another (supra) for the proposition that TSERC’s consent is mandatory u/s 86(1)(b) despite tariff is being determined by the CSERC. In this decision of ATE, the electricity was to be purchased by the Himachal Pradesh State Electricity Board (HPSEB) from the Uttarkhand Jal Vidyut Nigam Ltd., (UJVNL) and on the jurisdiction of the Uttarkhand Electricity Regulatory Commission to determine the tariff. The ATE observed on the jurisdiction of H.P.State Commission “ H.P.State Commission, however, has the authority under section 86(1)(b) of the Act to determine whether HPSEB should procure power from UJVNL on the basis of tariff determined by the Uttarakhand State Commission.” Thus, the ratio laid down in the aforesaid two decisions clearly and amply support our view that TSERC has the authority u/s 86(1)(b) of the Act to accord the approval for the power going to be procured from the CSDISCOM on the basis of the tariff determined by the CSERC.

15. The Govt. of Telangana had taken the extraordinary initiative to tide-over the acute shortage of power that was prevailing at the time of bifurcation of the state by making advance planning in the form of MoU with the Govt. of Chhattisgarh and the PPA before this Commission for consent is the result thereof. The CSERC has not determined the final tariff of the Marwa Thermal Plant. We are passing this interim order, for facilitating the procurement of power and to meet the increasing peak demand of power in the state which in-turn results in an assured supply of power to all the consumers of the Telangana State especially agricultural sector.

16. During the pendency of this petition, the CSPGCL filed a petition before the CSERC in March, 2016 for determination of the provisional tariff for the Marwa Thermal Power Plant and the CSERC has determined the provisional tariff in the order dated 30.04.2016 at a sum of Rs.3.90ps per unit comprising of the fixed cost of Rs.2.70ps and the variable cost of Rs.1.20ps per unit. We accord our approval/consent to the provisional tariff determined by the CSERC for the supply of power from CSDISCOM to TSDISCOM till the final tariff order passed by the CSERC.

CHAPTER - II

MODIFICATIONS OR AMENDMENT OF VARIOUS CLAUSES OF PPA

17. This Commission has examined the various clauses of the PPA and also took into consideration, the suggestions and comments received from various stakeholders and directs the TSDISCOMS to make changes in the PPA. By and large, the directions of this Commission for modification / amendment or Removal of clauses of PPA to the TSDISCOMS are for the following purposes:

- (i) to protect the interests of the consumers of TSDISCOMS;
- (ii) to have consistency in various clauses;
- (iii) to balance the interests of TSDISCOMS and the supplier;
- (iv) to protect the interests of TSDISCOMS and
- (v) other minor modifications

18. Article 6.5.3 of PPA stipulates “Notwithstanding anything contained in Articles 6.5.1 and 6.5.2 above, the supplier shall recover all Fixed Charges even in case the Procurers do not schedule the **entire Aggregate Contracted Capacity**, subject to the Power Station having declared Normative Availability as per the terms of this Agreement”. The Wardha-Maheshwaram (W-M) line is expected to be completed shortly. If TSDISCOMS are allotted corridor less than the required 1000 MW, the obligation towards payment of fixed charges should be limited to the quantum of power for which the Power Grid Corporation of India Ltd., (PGCIL) accords the approval. The Contracted Capacity should be lower of the Net Capacity or the Capacity for which PGCIL issues the approval. Prior to the effective date of PGCIL Corridor, TSDISCOMS should not have the obligation to pay the charges and

even after that obligation should be limited to the quantum for which the Corridor is approved.

In view of the above issues, the Commission directs for the modification of Article 6.5.3.

The Contracted Capacity is defined as that which is coterminous with the approved transmission capacity by the CTU for evacuation of the power from the Supplier's Delivery point. Hence, the fixed charge payment obligation will be limited to the Contracted Capacity.

✓ The modified Art 6.5.3 is as under:

'The Fixed Charges liability of the Procurers shall be commensurate with the CTU approved quantum of power for use by the Procurers and the 'Scheduled delivery Date' shall also be reckoned from the date of CTU Transmission Corridor availability to the Procurers. Till the Transmission Corridor to be provided by the CTU to enable the Procurers to avail of power from the Supplier comes into use, the Responsibility relating to the Fixed Charges liability shall lie with the CSPDCL only as per the provisions laid down in the back to back PPA between CSPDCL & CSPGCL, annexed as Schedule - 2 of this Agreement'.

19. **Term of Agreement Definition:**

There appears to be no clarity between Art 2.2 and definition in Art 1 in deciding the term of the PPA. As per Article 2.2, the effective date for commencement of term of the agreement had already taken place on 22-09-2015 i.e., date of PPA. But, as per Art-1 (Definitions), the Agreement Term commences from the Delivery Date. Presuming that the Delivery date is same as the Schedule Delivery Date, then 'delivery date' and 'effective date' are not one and the same. 'Delivery Date' shall be the 'Effective Date' when PGCIL Line is available for use.

To give clarity to Art 2.1.1 and Definition of 'Effective Date', this Commission directs to modify them as under:

2.1 TERM OF AGREEMENT

Art 2.1.1 Subject to the terms of this Agreement, this Agreement shall continue in force from the Effective Date to the Expiry Date, unless terminated early.

Further, modify, the definition of Effective date in Article 1;

Effective Date shall mean the date on which the last of the parties to the agreement sign or the delivery date, whichever is later;

After modification of the Art 2.1.1 and Definition of 'Effective Date' in Article-1 the term of Agreement becomes clear and certain.

20. Revised Delivery Schedule Definition:

- ✓ Article 6.1.3-Revised Scheduled Delivery Date: This Article employs the word 'phased manner' and it is susceptible to different meanings. Therefore, the word 'Phased manner' in the Article 6.1.3 is modified as under to give the certainty to the Article.

The 'Supplier' and the 'Procurers' may mutually agree for the commencement of supply of power and the quantum of power as mutually agree upon from the Revised Scheduled Delivery Date(s).

21. Sharing of Power among the TSDISCOMs:

- Article 6.7.3 puts the TSDISCOMS in a disadvantageous position. The PPA is for the entire 1000 MW capacity and the TSDISCOMS should have the total liberty to use the power in whatever manner they want. Schedule 5 of the PPA is only an indicative of the relative requirement of each of the TSDISCOMs.

Therefore, the Article 6.7.1 shall be modified to utilize the total contracted capacity by any or both the TSDISCOMs irrespective of their sharing ratio indicated in Schedule 5 in case one of them is unable to draw the power as per its share indicated in Schedule 5 of PPA as follows:

Subject to the provisions of this Agreement, the entire Aggregate Contracted Capacity shall be for the exclusive benefit of the Procurers and the Procurers shall have the exclusive right to purchase the entire Aggregate Contracted Capacity from the Supplier. The Supplier shall not grant to any third party or allow any third party to obtain any entitlement to the Contracted Capacity and/or Scheduled Energy. To meet this obligation, the Procurers are entitled to make inter-se adjustment of sharing of power in deviation to the proportion specified in Schedule 5 to this Agreement in exceptional situation after informing the Supplier and the payment of tariff shall be made accordingly.

- ✓ The unutilized power by the TSDISCOMS shall be sold by the CSPDCL (seller). The Commission suggests to modify / add the Article 6.7.3 to recover the balance fixed cost and sharing of excess proceeds, if any, received by the seller. The TSDISCOMS are directed to modify the Article 6.7.3 as follows:

Article 6.7.3

Where both the Procurers do not avail of the available capacity corresponding to their Contracted Capacity or default of payment or during the restoration period allowed as specified in Article 7.5.4, the supplier shall be entitled to sell such available capacity not scheduled by the Procurers to any person without losing the right to receive the capacity charges from both the procurers in respective proportions as stipulated in Schedule 5.

Provided that the total price received on sale of power from the third party including the fixed charges received from the procurers should not exceed the tariff fixed by the Appropriate Commission. In case, the sum received by the supplier on sale of power is less than the tariff fixed by the Appropriate Commission, the supplier is entitled to receive the balance sum to the extent of tariff fixed by the appropriate Commission from the procurers in respective proportions as stipulated in Schedule 5.

Provided further that the sum received by the supplier on sale of power is more than the tariff fixed by the appropriate Commission, the supplier shall share the excess sum with the procurers equally. The procurers may inturn share the excess sum in the respective proportions as stipulated in Schedule 5.

Provided further, where the un-availed contracted capacity of one procurer is not purchased by the second procurer in accordance with Article 6.7.2 the selling price of power to a third party including the fixed charges shall not exceed the tariff fixed by the appropriate Commission.

22. Normative Annual Plant Availability Factor or “NAPAF”:

- As per Article 1 of the PPA, Normative Annual Plant Availability Factor or “NAPAF” shall mean eighty five percent (85%) of the Aggregate Contracted Capacity at the interconnection point for full recovery of fixed charges on a Contract Year basis. However, Article 6.5.1 states that, “ If the Open Access is granted for 80% to 100% of the Contracted quantum of power Capacity for a particular period, the ‘Supplier’ will have to arrange for scheduling of a minimum of 80% of the Aggregate Contracted Capacity during that period in energy terms.”

- Hence, the Article 6.5.1 requires to be amended to provide scheduling of a minimum of 85% of the capacity for which open access is likely to be granted and which shall not be less than 85% of the Aggregate Contracted Capacity.

✓The Article 6.5.1 shall be modified as follows:

The Procurers shall apply for the open access for the contracted quantum of energy and the period. If the Open Access is granted from 85% to 100% of the Contracted Capacity of power for a particular period, the ‘Supplier’ shall have to arrange for scheduling of a minimum of 85% of the Aggregate Contracted Capacity during that period in energy terms.

23. Definition of Fuel:

- ✓ The word ‘Fuel’ in Article 1 is defined as “the primary fuel used to generate electricity, namely, domestic coal”. The term ‘domestic coal’ as employed in Article 1 needs to be clearly defined. Further, if there is any shortfall of linkage / captive coal, the supplier can procure the coal. The TSDISCOMS are directed to add (this) clause in Schedule 4 as 4.2.1 (ii) (a) which is as under:

(a) Landed Fuel Cost of Coal;

Provided that where the cost of the domestic coal used is other than the coal allocated to the power house by the Government of India either through captive mine or linkage coal, the Supplier / Developer shall obtain prior approval of the procurer(s), incase the cost of such coal is more than the cost of captive mine coal or linkage coal.

24. Adhoc Tariff:

- It is not clear from Art 5.1.5 (c): Adhoc Tariff, whether the payments of procurer to the supplier, prior to determination of actual tariff by the CSERC, shall be based on proposals submitted by the CSPGCL to the CSERC or on the basis of Adhoc tariff determined by the CSERC; It is also not very clear how the adjustments will be made after the final tariff is determined?
- ✓ The TSDISCOMS are directed to add / modify under the Article 5.1.5 (c) & (d) (Adhoc Tariff) as follows:
 - (c) The Supplier and the Procurers agree that the billing and payment shall be made on an approved provisional tariff as determined by the CSERC, pending the final tariff approval.*

- (d) *The Supplier shall inform the Lead Procurer of any provisional Tariff determined by the CSERC for the sale of electricity under the power purchase agreement dated 03 January 2011, pending the determination of the actual Tariff, for the purpose of billing on a provisional basis, subject to adjustment as and when such Tariff is determined with interest as determined by the Appropriate Commission, if the provisional tariff payment is in excess of the regular tariff*
- (e) *The payments made by the procurers towards the provisional tariff from time to time shall be adjusted in a chronological order. Where the provisional tariff paid by the procurers to the supplier is in excess of the regular tariff determined by the Appropriate Commission, the supplier shall pay interest on the excess provisional tariff sum from the date of payment by the procurers till the date of refund of excess provisional tariff to the procurers at the prevailing Working Capital interest rate by the State Bank of India.*

25. Vide letter dated 18.02.2017, the TSDISCOMS requested for modification of Article 5.1.3 clarifying that no Electricity Duty shall be leviable. Further, modify Article 5.1.4 to recover the MAT after the conclusion of the PPA relating to the PPA period.

- 5.1.3 *All taxes levied by the competent authority, cess or otherwise any levy, by whatever name or names called or either described by an Indian Government Instrumentality, in respect of the energy generated by the Developer, including cess or on Auxiliary Consumption or any other type of consumption, including water, environment protection shall be paid for by the supplier, and reimbursed by the Procurers. It is clarified that, there is no ED/Cess on ED/Additional Cess on Sent Out Energy (SOE), as the Govt. of Chhattisgarh has exempted CSPGCL from payment of ED.*
- 5.1.4 *The Minimum Alternate Tax (MAT) leviable under the Income Tax Act, 1961 of the Generator in respect of Marwa Power Station shall be payable by the Procurers. The MAT credit given to the Developer by the Income Tax Department shall be considered for the purpose of tax liability of the Developer. The IT liability of the Procurers shall be restricted to a sum after giving credit to the MAT paid in earlier years by the Procurers. The MAT credit given to the Developer after the expiry of this agreement relating to the agreement period shall also be passed on to the procurers by the Developer. While computing the tax liability of the Developer, the tax incentives provided in the Income Tax Act, 1961 shall be taken into account.*

26. The TSDISCOMS are directed to modify / add the Articles 13.1.1 & 13.3.2 as under to give clarity and certainty:

13.1.1 *Any legal proceedings under this Agreement in respect of any matters, claims or disputes shall be under the jurisdiction of appropriate court in Raipur.*

13.1.2 *Dispute Resolution through Arbitration*

If any Dispute arises out of or in connection with any claims not covered in Article 13.3, or if any Dispute arising out of or in connection with any claims covered in Article 13.3 remains unresolved, such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 and under Section 158 of the Electricity Act, 2003 and the Rules made thereunder.

27. Vide letter dated 18.02.2017, the TSDISCOMS have requested for modification of Article 3.1 as agreed by the Supplier as under:

Delivery Point.

3.1 *Open Access*

3.1.1 Subject to Article 3.1.2 and Article 3.1.3, the sale of electricity, pursuant to this Agreement, shall be at the Delivery point viz., Chhattisgarh State Power Transmission Company Ltd (CSPTCL) STU Periphery, and it shall be the obligation and responsibility of the 'procurers' to make the required arrangements for evacuation of electricity onward from the Delivery Point.

The above modification is accepted.

28. Other Modifications / Amendments

Article 1: Definitions and Interpretations

- ✓ Modify Injection Point which is same as 'Interconnection Point'.

Interconnection point / Injection Point: shall mean the Delivery point.

- ✓ Modify "Monthly Bill" or "Monthly Invoice" as under

shall mean a monthly invoice comprising of Capacity Charges (applicable after Delivery Date) and Energy Charges (as applicable) as determined by the CSERC, prepared pursuant to the Regional Energy Account, including any penalty, as per Schedule 4 of this Agreement;

- ✓ *Articles 1.2.6 be deleted, Article 1.2.7 is modified as under:*

1.2.7. 'The winding up' or reorganization of a company shall be construed as winding up or reorganization under chapter(s) XV or XX of the Companies Act, 2013, as the case may be.

Consequently, sub article numbering has to be changed.

29. Article 3: Open access & Transmission

Modify Article 3 as under:

3.1.2 The 'Procurers' shall be required to apply in advance for open access as per the applicable regulations specified by the Appropriate Commission so as to start evacuating the Contracted Capacity from the Delivery Point onwards.

3.1.3 The 'Procurers' shall strive to obtain open access from the concerned SLDC/RLDC/CTU for the period for which the Agreement subsists.

30. To give certainty and to remove the drafting issue, modify the Article 7.4.5 as under:

Article 7: BILLING AND PAYMENT

Article 7.4.5:If the 'Procurers' fail to pay a Monthly Bill or a Supplementary Bill or part thereof on the Due Date, other than the disputed bill or a portion of the disputed bill then, subject to Article, 'Supplier' may draw upon the Letter of Credit, and accordingly the Bank shall pay without any reference or instructions from the 'Procurers', an amount equal to such Monthly Bill or Supplementary Bill or part thereof, plus Late Payment Surcharge, if applicable, in accordance with Article above, by presenting to the Scheduled Bank issuing the Letter of Credit, the following documents:

- a. a copy of the Monthly Bill or Supplementary Bill which has remained unpaid by the Procurer(s);*
- b. a certificate from 'Supplier' to the effect that such bill, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date; and*
- c. calculations of applicable Late Payment Surcharge, if any.*

- ✓ Delete Article 7.5.3. *(because the contents of this Article have been clubbed in Article 6.7.3 and rationalized.*

- ✓ consequently sub-article numbering in Article 7 changed.

31. Article 8: FORCE MAJEURE

- ✓ Delete Art 8.3.1 (c) (iv) as it leads to disputes and inequities to the TSDISCOMS.

32. Article 10: EVENTS OF DEFAULT AND TERMINATION

To give certainty, modify the following Articles

Modify 10.1.1 (c): by adding the expressions 'Revised Scheduled date / Delivery date' at the end of the Article to give certainty. the 'Procurers' fail to evacuate power from the Delivery Point beyond a continuous period of six (6) months from the Scheduled Delivery Date or Revised Scheduled Delivery Date;

In Article 10.2.1 (d): after 'the Delivery Date', the Supplier fails to make available at least of the Contracted Capacity which is coterminous with the approved transmission capacity by the CTU for evacuation of power at Delivery point in energy terms for a consecutive period of 12 (twelve) months.

- ✓ Add the proviso to Article 10.3.4 to make the Article equitable :

Provided further that, the Supplier supplies the power to any third party at a price less than the tariff determined by the CSERC applicable at the relevant time, the Procurer shall be responsible to pay the difference between the price realized by the supplier from the third party and the tariff fixed by the CSERC

(a). Under the present PPA, the compensation payable by the TSDISCOMS for their event of default is provided for in Proviso to Article 10.3.4. This Article stipulates that the TSDISCOMS have to pay capacity charges based on the normative availability to the supplier for the period upto the expiry date, subject to a maximum of three (3) years or Twelve (12) months or half of the term, whichever is lower. In a sharp contrast, penalty for termination by the supplier is contained in the Article 10.5.1, which stipulates that in the case of termination of agreement due to a suppliers' event of default, the supplier shall reimburse to the procurer the charges incurred by the procurers' for cancelling the agreement for open access. Thus, the consequences of termination of the agreement in the case of

supplier are not equitable as against the TSDISCOMS liability to pay the fixed charges. To make the terms of the PPA equitable, the Article 10.5.1, needs to be replaced with the following Article.

10.5.1 Consequences for termination of agreement.

In the event of the supplier's event of default results in the termination of the power purchase agreement and also results in non-supply of power to the procurer(s), the supplier shall make the payment to the procurer(s) @20% of the applicable tariff for a period of Twelve (12) months and the charges incurred by the procurer for cancelling the open access agreement(s).

Provided that in the absence of the applicable tariff, the pooled cost of power of the procurer(s) for the relevant period shall be used or becomes the base for determination.

33. ARTICLE 11: LIABILITY AND INDEMNIFICATION:-

- ✓ Modify the Article 11.5.1as follows to make it simple and the concept of strict liability is not applicable in the context of purchase of electricity:

Except as expressly provided in this Agreement, or where prohibited under law, neither the Procurers nor the Supplier nor its/ their respective officers, directors, agents, employees or Affiliates (or their officers, directors, agents or employees), shall be liable or responsible to the other Party or its Affiliates, officers, directors, agents, employees, successors or permitted assigns or their respective insurers for incidental, indirect or consequential damages, connected with or resulting from performance or non-performance of this Agreement, or anything done in connection herewith, including claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement), any increased expense of, reduction in or loss of power generation or equipment used.

34. ARTICLE 15: MISCELLANEOUS PROVISIONS

- ✓ Delete Article 15.6 'Confidentiality' : TSDISCOMS are the companies owned by the GoTS and are governed by the provisions of the Right to Information Act. Therefore, delete this Article.

Delete Article 15.7 'Affirmation' is not required as the TSDISCOMS are State undertakings and Anti Corruption Laws are applicable.

35. Amendment to Schedule 4

There shall be no incentive payment and the clause 4.7 of the Schedule 4 requires to be deleted. Further, in clauses 4.4 and 4.5 of Schedule the word

'procurers' requires to be replaced with the word 'supplier'. In view of the amendment to the 'delivery point' clause 4.2.1 (iii) requires to be deleted.

CHAPTER - III DIRECTIONS
TO TSDISCOMS

36. For safeguarding the interests of the consumers of the TSSPDCL and TSNPDCL, the following directions and guidance are given to the TSDISCOMS only for "regulating" the purchase of power from the CSDISCOM.

- (i) The Chhattisgarh State Power Distribution company Ltd (CSPDCL) has a back to back long term PPA with the Chhattisgarh State Power Generation company Ltd (CSPGCL) for procurement of 1000MW from the thermal power station situated at Marwa. Thus, the Marwa power project is a dedicated plant for supply of power during the tenure of the power purchasing agreement with the TSDISCOMS. In this order, it is held that the determination of tariff shall be done by the Chhattisgarh State Electricity Regulatory Commission (CSERC). In March, 2016 a petition for approval of the provisional tariff for Marwa Thermal Project was filed by the CSPGCL for determination of tariff. In pursuance, thereof an order was passed on 30.04.2016 determining the provisional tariff of Rs.3.90ps / kWh comprising of Rs.2.70ps (Fixed Charges) and Rs.1.20ps / kWh (Energy Charges). The final tariff shall be based on the capital cost of the project approved by the CSERC after the due regulatory process. To protect the interests of consumers of the TSDISCOMS, we direct the TSDISCOMS to participate in the final tariff determination proceedings before the CSERC and they should also present their views on the capital cost of the Marwa project including the Interest during the Construction period.
- (ii) The provisional tariff order of the CSERC reveals that provisional tariff of Rs.3.90ps / kWh does not include inter alia, pension and gratuity liability which may form a part of the final tariff. The TSDISCOMS may discuss this issue with CSDISCOM and resolve it amicably.

- (iii) The petition for provisional tariff reveals that weighted average rate of interest on loans is 13% and the rate of interest on working capital is 13.2%. The interest rates are declining in the market and the TSDISCOMS may plead before the CSERC and the CSDISCOM for reduction of interest rates and swapping of loans, if possible so as to reduce the interest burden on the consumers of TSDISCOMS.
- (iv) The tariff comprises of (i) Fixed cost / capacity charges and (ii) fuel charges / variable charges. The provisional filings by CSPGCL before the CSERC reveal the total fixed cost of the project upto August 2015 and the expected Annual Fixed cost. The project has the debt equity ratio of 90:10 as against the normal ratio of 70:30. Prima facie, the deviation of the debt equity ratio is not prejudicial to the interests of the TSDISCOMS. In the Regulations of CSERC, 90% of the depreciation is spread over in 15 years at the rates prescribed by the Ministry of Power and the balance cost shall be spread over in the remaining life of the plant. Considering the tenure of the PPA and after perusing the provisional tariff petition of CSPGCL of March 2016, we advise the TSDISCOMS to consider the clause 83 of *the Chhattisgarh State Electricity Regulatory Commission (Terms and Conditions for determination of tariff according to Multi-year Tariff principles and Methodology and Procedure for determination of Expected revenue from Tariff and Charges) Regulations, 2015* and plead for the relaxation of the rules so that the tariff determined shall be in the interests of the consumers of the Telangana State.

37. The amendments/ modifications discussed / enumerated in Chapter - III shall be incorporated in the draft PPA along with the final tariff to be determined by the CSERC on a non-judicial stamp paper and duly submit the same to this office for consenting the draft PPA finally u/s 86(1)(b) of the Electricity Act, 2003.

This order is corrected and signed on this 31st day of March, 2017.

Sd-
H. SRINIVASULU
MEMBER

Sd-
ISMAIL ALI KHAN
CHAIRMAN